

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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10-CV-0958 (AKT)

In the matter of the Estate of THERESA
MANIACI-CANNI and the Estate of GEORGE
CANNI, as owners and/or owners *pro hac*
vice of the recreational vessel,
UNCANNI, 2001 Hustler, for Exoneration
from or Limitation of Liability

**REPLY AFFIDAVIT OF
FRANK FLORIANI IN
FURTHER SUPPORT OF
CLAIMANT PETER SOFIA'S
MOTION FOR
APPORTIONMENT OF
EXPERT EXPENSES**

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STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

FRANK V. FLORIANI, being duly sworn, deposes and says:

1. I am a member of the law firm of SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C., attorneys for the claimant PETER SOFIA
("claimant"), herein and as such am fully familiar with the facts
and circumstances of the within action. I submit this reply
affidavit in further support of claimant's motion for
apportionment of expert expenses in this action between claimant
and Deborah Sugamele, the Estate of Joseph J. Sugamele, Thomas
Soluri, and Laura Soluri ("respondents").

2. Attached to this affidavit are Exhibits referenced in
claimant's Reply Brief in Further Support of Claimant's Motion for
Apportionment of Expenses.

3. Attached as Exhibit A is a true and correct copy of the
Town of Hempstead's List of Exhibits submitted in opposition to

the motion for summary judgment served by Peter Sofia, dated June 4, 2012.

4. Attached as Exhibit B is a true and correct copy of the proposed List of Exhibits submitted in support of the Estate of Joseph Sugamele, Sr., Deborah Sugamele, Laura Soluri, and Thomas Soluri, dated January 24, 2012 and annexed as an attachment to an email sent by Cornelius A. Mahoney to me on January 24, 2012.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of September 2012, at New York, New York.

/s/ Frank V. Floriani
FRANK V. FLORIANI (FF4489)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the matter of the complaint of the Estate of
THERESA MANIACI-CANI, as owner of, and
the Estate of GEORGE CANNI as owner
pro hac vice of the recreational vessel,
UNCANNI, 2001 Husler, for Exoneration from or
Limitation of Liability.
-----X

10 CV 00958 (AKT)

LIST OF EXHIBITS

The following is a list of the exhibits submitted by the Town of Hempstead in opposition to the motion for Summary Judgment served by Respondent/Third-Party Plaintiff, Peter Sofia:

3. Attached as Exhibit A is a copy of Petitioners' Complaint.
4. Attached as Exhibit B is a copy of Claimant Sofia's Answer.
5. Attached as Exhibit C is a copy of Claimant Sofia's Claim.
6. Attached as Exhibit D is a copy of Claimant Sofia's Third-Party Complaint.
7. Attached as Exhibit E is a copy of The Town of Hempstead's Answer.
8. Attached as Exhibit F is a copy of Claimant Sofia's Summons and Complaint filed in New York State Supreme Court, Nassau County.
9. Attached as Exhibit G is a copy of the March 23, 2011 Stipulation discontinuing any and all claims against the Town of Oyster Bay.
11. Attached as Exhibit H is a copy of the March 24, 2011 Stipulation consenting to United States Magistrate Judge Kathleen A. Tomlinson presiding over this action for all purposes.
12. Attached as Exhibit I is a copy of the January 27, 2012 Stipulation discontinuing any and all claims against The County of Nassau.
13. Attached as Exhibit J is a copy of the Nassau County Police Department's Recreational Boating Accident Investigation and Inspection Report, M.A.B. 32-09.

14. Attached as Exhibit K is a copy of a color a photograph of the Uncanni prior to the accident.

15. Attached as Exhibit L is a copy of the Registration and Certification of Title of the Uncanni.

16. Attached as Exhibit M is a copy of the deposition transcript of James R. Feynman, administrator of Petitioners' Estates.

17. Attached as Exhibit N is a copy of the deposition transcript of Deborah Sugamele.

18. Attached as Exhibit O is a copy of the 50(h) transcript of Laura Soluri.

19. Attached as Exhibit P is a copy of the 50(h) transcript of Thomas Soluri.

20. Attached as Exhibit Q is a copy of the Office of the Medical Examiner of Nassau County's Toxicology Report for George Canni.

21. Attached as Exhibit R is a copy of the Office of the Medical Examiner of Nassau County's Toxicology Report for Theresa Maniaci-Canni.

22. Attached as Exhibit S is a copy of the Detective Division Supplementary Report prepared by Detective Bazylewicz.

23. Attached as Exhibit T is a copy of the Report and Affidavit of Charles A. Catanese, M.D.

24. Attached as Exhibit U is a copy of the deposition transcript of Officer Dennis O'Sullivan.

25. Attached as Exhibit V is a copy of the deposition transcript of Peter Sofia.

26. Attached as Exhibit W is a copy of the Nautical Almanac for October 4, 2009.

27. Attached as Exhibit X is a copy of the October 4, 2009 weather report from Farmingdale, New York Airport.

28. Attached as Exhibit Y is a copy of the NOAA tide data chart for October 4, 2009.

29. Attached as Exhibit Z are copies of a color photographs of the Uncanni's GPS chart-plotter's "bread crumbs" for October 4, 2009, taken by P.O. O'Donnell.

30. Attached as Exhibit AA is copy of a recording of the October 4, 2009 "911 call" made by Thomas Soluri.¹

31. Attached as Exhibit BB is a copy of the deposition transcript of Steven DiBenedetto.

32. Attached as Exhibit CC is a copy of the deposition transcript of Joseph Loguidice.

33. Attached as Exhibit DD is a copy of the deposition transcript of John Tetenes.

34. Attached as Exhibit EE is a copy of the deposition transcript of Captain Philip J. Dickman.

35. Attached as Exhibit FF is a copy of the deposition transcript of Donald C. Toby.

36. Attached as Exhibit GG is a copy of the a Chart prepared for the Nassau County Department of Public Work's Mosquito Control Unit, and mis-identified as a Town of Hempstead Department of Conservation and Waterways Navigational Aids Chart 1983-1984 by the Third-Party Plaintiff.

37. Attached as Exhibit HH is a copy of Captain Philip J. Dickman's Log as to Town of Hempstead Buoys, 2007-2009.

38. Attached as Exhibit II is a copy of the purported United States Coast Guard Post-Grounding ATON report.²

¹ A copy of the CD of the transmission will be provided to the Court.

² Note that the Town of Hempstead objects to the admissibility of the purported ATON Report, but makes reference to same as it is relied upon by the Third-Party Plaintiff in his argument for summary judgment. *See*: Fed. R. Civ. P. 56(e), and 46 U.S.C.A. 6308(a).

39. Attached as Exhibit JJ is a copy of the Town of Hempstead's Amended Response to Requests for Documents, dated February 16, 2011.

40. Attached as Exhibit KK is a copy of an excerpt of the United States Merchant Fleet, National Oceanic and Atmospheric Administration (NOAA) marine navigation chart for Hempstead Bay. [NOAA Nautical Chart 12352].

41. Attached as Exhibit LL is a copy of an excerpt of the United States Coast Guard 2009 LIGHT LIST, Vol. I, Atlantic Coast, St. Croix River, Maine to Shrewsbury River, New Jersey.

42. Attached as Exhibit MM is a copy of the Report and Affidavit of Brian F. Boyce, USN (Ret).

43. Attached as Exhibit NN are a copy of the Report and Affidavit of Captain Richard DiNapoli.

44. Attached as Exhibit OO deposition transcript of Joseph Avella, Ph.D., Chief Toxicologist, Nassau County Medical Examiner's Office.

47. Attached as Exhibit PP is a copy of the Nassau County Medical Examiner's Toxicology Report for Joseph Sugamele, Sr.

48. Attached as Exhibit QQ Expert Report of Michael Lehrer, Ph.D., Forensic Toxicologist retained by the Town of Hempstead.

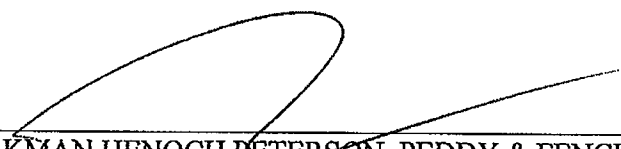
49. Attached as Exhibit RR is the expert report of John A. Tylawsky, P.E. Marine Engineer retained by the Town of Hempstead.

50. Attached as Exhibit SS is a copy of the Town of Hempstead's Rule 26 Disclosure. Containing copies of the Town's submissions to the United States Coast Guard as to placement and position of the Town of Hempstead buoys and navigational aids in 1983-84, 2000-2001,

2004-2005, 2006-2007 and 2008-2009.

51. Attached as Exhibit TT is a copy of the 50(h) transcript of Peter Sofia.

Dated: Mineola, New York
June 4, 2010



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
In the Matter of

Docket No.: 10 CV 0958
(LDW)

COMPLAINT OF ESTATE OF
THERESA MANIACI-CANNI and the
ESTATE OF GEORGE CANNI, as owners
and/or owners *pro hac vice* of the
recreational vessel UNCANNI,
2001 Hustler, for Exoneration from or
Limitation of Liability

LIST OF EXHIBITS

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The following is a list of the exhibits submitted in support of the Estate of Joseph Sugamele, Sr., Deborah Sugamele, Laura Soluri and Thomas Soluri:

1. Complaint for Exoneration from or Limitation of Liability.
2. Notice of Complaint for Exoneration from or Limitation of Liability.
3. Order Restraining Suits, Approving Petitioner's Security, Directing Issue of Notice and the Filing of Claims.
4. Peter Sofia's Answer to Complaint for Exoneration from or Limitation of Liability.
5. Claim of Peter Sofia.
6. Deborah Sugamele's and the Estate of Joseph J. Sugamele's Answer to Complaint.
7. Claims of Deborah Sugamele and Estate of Joseph J. Sugamele.

8. Thomas Soluri's and Laura Soluri's Answer to Complaint.
9. Claims of Thomas Soluri and Laura Soluri.
10. Third Party Complaint against the County of Nassau, the Town of Oyster Bay and the Town of Hempstead commenced by Peter Sofia.
11. Answer to Third Party Complaint served by the Town of Hempstead.
12. Stipulation of Discontinuance of claims brought by L&L Marine d/b/a Sea Tow Freeport.
13. Stipulation of Discontinuance of Third Party Action commenced against the Town of Oyster Bay.
14. Deposition of Peter Sofia, Defendant/Respondent.
15. Deposition of James R. Feynman, Executor of the Estates of both George Canni and Theresa Maniaci-Canni, Petitioners.
16. Deposition of Laura Soluri, Defendant/Respondent.
17. 50(h) Examination of Laura Soluri, Defendant/Respondent.
18. Deposition of Thomas Soluri, Defendant/Respondent.
19. 50(h) Examination of Thomas Soluri, Defendant/Respondent.
20. Deposition of Deborah A. Sugamele, Defendant/Respondent.
21. 40(h) Examination of Deborah A. Sugamele, Defendant/Respondent.
22. Deposition of Steven DiBenedetto, non-party witness.
23. Deposition of John Tetenes, non-party witness.
24. Deposition of P.O. Dennis O'Sullivan, NCPD, investigating Police Officer.
25. Continued deposition of P.O. Dennis O'Sullivan, NCPD.

26. Recreational Boating Accident Investigation and Investigation Report prepared by P.O. O'Sullivan.
27. Deposition of Det. Michal Bazylewicz, N.C.P.D.
28. Detective Division, Supplemental Report prepared by Det. Bazylewicz.
29. Deposition of Donald C. Toby, Supervisor of Waterways Navigation Aid and Maintenance, Town of Hempstead.
30. Deposition of Philip J. Dickman, Navigational Aids Maintenance Supervisor, Town of Hempstead.
31. Captain Dickman's Log.
32. 3 photographs of the R/V UNCANNI prior to casualty.
33. 1 photograph of Buoy 214 and 1 photograph Buoy 215 which mark opposite sides of Great Island Channel.
34. Nautical Chart 12352 showing Great Island Channel and Gooses Island.
35. Deposition of Joseph Logudice, non-party witness, President of Hustler Power Boats manufacturer of the R/V UNCANNI.
36. New York State Certificate of Title indicating Theresa A. Manaci, owns 2001 Huster.
37. U.S.C.G. Certificate of Documentation indicating Theresa A. Manaci owns R/V UNCANNI.
38. N.Y. State Boat Registration indicating Theresa A. Manaci owns the 2001 Hustler.
39. Certificate of Marriage Registration showing George Canni and Theresa Manaci married 9/13/2003.

40. Deposition of Gerard A. Catanese, M.D. Deputy Medical Examiner, Nassau County.
41. Certificate of Death – George Canni.
42. Report of Autopsy – George Canni.
43. Certificate of Death – Theresa Canni.
44. Report of Autopsy – Theresa Canni.
45. Certificate of Death – Joseph Sugamele, Sr.
46. Deposition of Joseph Avella, Ph.D., Chief Toxicologist, Nassau County Medical Examiner's Office.
47. Continued deposition of Joseph Avella, Ph.D.
48. Toxicology Report Medical Examiner's Office – George Canni.
49. Toxicology Report, Medical Examiner's Office – Theresa Canni.
50. Toxicology Report, Medical Examiner's Office – Joseph Sugamele, Sr.
51. Expert Report of Charles Catanese, Pathologist retained by Peter Sofia.
52. Expert Report of Brian F. Boyce, Reconstructionist retained by Peter Sofia.
53. Expert Report of Captain Richard DiNapoli, Marine Engineer retained by Peter Sofia.
54. Expert Report of Michael Lehrer, Ph.D., Forensic Toxicologist retained by the Town of Hempstead.
55. Expert Report of John A. Tylawsky, P.E. Marine Engineer retained by the Town of Hempstead.

Dated: New York, New York
January 24, 2012

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By: _____

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Kristen DePaul, being duly sworn, deposes and says:

I am not a party to this action. I am over 18 years of age. I have a business address at 120 Broadway, New York, New York, 10271.

On the 7th day of September, 2012, I served the within **REPLY AFFIDAVIT OF FRANK FLORIANI IN FURTHER SUPPORT OF CLAIMANT PETER SOFIA'S MOTION FOR APPORTIONMENT OF EXPERT EXPENSES** upon the following attorney(s) for the parties in this action, at the address designated by said attorney(s) for that purpose, by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

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11 Hanover Square, 10th Floor
New York, New York 10005



Kristen DePaul

Sworn to before me this
7th day of September, 2012



Notary Public

YISSEL MARTINEZ
Commissioner of Deeds
City of New York No. 4-6969
Cert. Filed in New York County
Commission Expires March 1, 20__ 13